

[Assembly Bill 1203](#) (Jones-Sawyer)

Date: 04/06/15

Program: Fire Prevention Fee

Sponsor: Author

Public Resources Code Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4

Effective: January 1, 2016

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***This analysis is limited to the provisions which impact the Board of Equalization.***

**Summary:** Substitutes the fire prevention fee with a surcharge on commercial and residential fire and multi-peril insurance policy premiums.

**Purpose:** To repeal a fee the author contends “does very little to actually provide viable fire protection services” and instead impose a special surcharge to fund disaster and emergency response activities.

**Fiscal Impact Summary:** Repeal of the fire prevention fee would result in a revenue loss of \$87 million, which is proposed to be offset by the surcharge. An estimation of revenue gain resulting from the surcharge is outside BOE’s purview.

**Existing Law:** Existing law<sup>1</sup> requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>2</sup> The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,<sup>3</sup> the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount was not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as adjusted by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board may<sup>4</sup> annually adjust the fire prevention fee rate. Any adjustment reflects the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. The \$152.33 fee for fiscal year (FY) 2014-15 remained the same from FY 2013-14; most bills will amount to \$117.33, as most owners will receive a \$35 reduction in the fee.<sup>5</sup>

**Collection and Administration.** Commencing with FY 2011-12, the BOE annually collects the fire prevention fee. The FCPL governs the BOE’s collection function.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each

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<sup>1</sup> Public Resources Code (PRC) Section 4213.

<sup>2</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC).

<sup>3</sup> PRC Section 4212(a).

<sup>4</sup> PRC Section 4212(b). AB 2048 (Ch. 895, Stats. 2014) made the adjustment permissive.

<sup>5</sup> If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner will receive a \$35 reduction for each habitable structure. Approximately 98% of habitable structures in an SRA are also covered by a local fire protection agency.

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person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may call if they have questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE's final determination. In certain cases, CAL FIRE may treat a petition for redetermination filed after the 30-day time period as an administrative protest or a claim for refund. CAL FIRE may treat the untimely petition as an administrative protest or claim for refund if it determines that the facts presented indicate that the fire fee may have been excessive or that the amount or the application of the fee may have been the result of a certain type of error.<sup>6</sup>

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals and determines refund eligibility, referring persons entitled to a refund to file a refund claim with the BOE.<sup>7</sup>

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund (Fund) has sufficient funds to finance specified prevention activities. CAL FIRE and the BOE began the FY 2014-15 (Year 4) billings in early March 2015.

An exemption from the fire prevention fee provides relief to the owner of any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due. If the habitable structure has not been repaired or rebuilt, then the exemption may apply to one subsequent year.<sup>8</sup>

**Tax on Insurers:**<sup>9</sup> Current law imposes an annual tax<sup>10</sup> on all insurers doing business in this state. RTC Section 12202 sets the current annual tax at 2.35%, except for specified premiums that are taxed at 0.5%.

For insurers, not transacting title insurance in this state, the annual tax basis is gross premiums, less return premiums, received by the insurer on business done in this state, other than premiums received for reinsurance and ocean marine insurance.<sup>11</sup> For insurers transacting title insurance,<sup>12</sup> the tax basis is all income from business done in this state except interest and dividends, real property rent, investment sale profits, and investment income. For insurers transacting ocean marine insurance,<sup>13</sup> the annual 5% tax is measured by that proportion of the insurer's underwriting profit from the ocean marine insurance written in the United States, which the gross premiums from ocean marine insurance written in this state bear to the gross premiums from ocean marine insurance written within the United States.

Under RTC Section 12204, the insurance tax is imposed in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

**Administration.** The insurance tax is jointly administered by three state agencies: the BOE, the Department of Insurance (DOI), and the State Controller (Controller). The Controller acts as a tax collector for any delinquent insurance tax. The DOI licenses, audits, and regulates insurers, processes insurance tax returns, and assesses and collects the tax amount each insurer is required to pay. The BOE issues the assessments provided by DOI and decides the validity of insurance tax appeals.

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<sup>6</sup> PRC Section 4220.1.

<sup>7</sup> PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

<sup>8</sup> PRC Section 4213.1.

<sup>9</sup> Part 7 (commencing with Section 12001) of Division 2 of the RTC.

<sup>10</sup> RTC Section 12201.

<sup>11</sup> RTC Section 12221.

<sup>12</sup> RTC Section 12231.

<sup>13</sup> RTC Section 12101.

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**Proposed Law:** This bill repeals the fire prevention fee.

This bill also adds Insurance Code Section 16034 to require all insureds in this state to pay a special purpose surcharge on each commercial and residential fire and multi-peril insurance policy issued or renewed on or after January 1, 2016, as specified, to the Office of Emergency Services (OES), or other OES-designated state agency. A 5% surcharge would be imposed on the premium written on property exposure for commercial or residential fire and multi-peril insurance properties located within a specified area, and within a political subdivision that is not a participant in the Master Mutual Aid Agreement. Properties located within a specified area, and within a political subdivision that is a participant in the Master Mutual Aid Agreement would be subject to a 3% surcharge. Admitted insurers, and surplus line brokers, must collect the surcharge from the insureds and separately state the surcharge on each policy.

Funds collected would be deposited into the newly created Disaster Response Fund to support disaster response and fire and rescue mutual aid activities of those departments.

**Background:** On July 7, 2011, Governor Brown signed ABx1 29,<sup>14</sup> which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Since then, numerous bills have been introduced to repeal, replace, or provide a fire fee exemption. Only AB 2048 (Ch. 895, Stats. 2014, Dahle), which made numerous changes to the program, has become law.

Other bills introduced during the last three legislative sessions include:

Bill No.	Session	Author	Subject
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Proposed repeal of the fire prevention fee and replaced with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be.
AB 1519	2013-14	Donnelly	Would have deleted the recurring 20% penalty for final redeterminations.
AB 1954	2013-14	Harkey	Would have provided a 90-day period for a petition for redetermination to become final, and within that 90-days allow a person to appeal to the BOE the denial of a refund.

<sup>14</sup> Chapter 8, Stats. 2011.

Bill No.	Session	Author	Subject
AB 2048	Ch. 895, Stats. 2014	Dahle	Changes included: (1) made optional the Fire Board's annual rate adjustment; (2) fee relief for a natural disaster; (3) added an "administrative protest" procedure to be administered by CAL FIRE; (4) eliminated the requirement to notify both the BOE and the Fire Board of a petition for redetermination; and (5) replaced the recurring 20% penalty with a one-time 10% penalty, and prohibits the 20% penalty from being imposed or added to the fee that remains unpaid.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
SB 832	2013-14	Gaines	Proposed a natural disaster exemption from payment of the fire prevention fee for structures destroyed or damaged.
SB 1413	2013-14	Wyland	Would have extended the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries & Cook	Proposed repeal of the fire prevention fee.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.

### Commentary:

- Effect of the bill.** Currently, the BOE is responsible for the issuance of fee assessments and collections, as well as processing CAL FIRE's adjustments to the fee that may result in a refund. While a repeal of the fire prevention fee would prevent future annual billings, it would not affect assessments that are due and uncollected prior to the repeal. BOE staff would work with CAL FIRE to address program administration and account maintenance issues.
- OES would administer the surcharge.** This bill provides that surcharge funds received by an admitted insurer shall be remitted to OES; and that surcharge funds received by a surplus line broker shall be remitted to the Surplus Line Association, who shall remit such funds to OES. The bill further provides that OES may designate another state agency to collect the surcharge on OES's behalf.
- Related bills.** [SB 520](#) (Berryhill) and SB 198 (Morrell) also repeal the fire prevention fee. [SB 250](#) (Gaines) and [AB 203](#) (Obernolte) both extend the date by which the annual fire prevention fee assessment is due and payable, as well as the time period in which to file a petition for redetermination, from 30 to 60 days. [AB 301](#) (Bigelow) requires CAL FIRE to notify habitable structure owners that the fee may be negotiated as a term of sale. [AB 1202](#) (Mayes) generally

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provides a fire prevention fee reduction in an amount equal to the amount paid to a local fire district for fire prevention services.

**Administrative Costs:** This bill would be effective January 1, 2016, and therefore prevent future annual billings. However, BOE would incur costs related to collection of outstanding amounts, account maintenance, and other administrative functions for the FY 2014-15. As this bill progresses, the BOE may be able to estimate those costs.

**Revenue Impact:** Fire prevention fee revenue for the first three billing years averaged \$78.7 million each year. Assessment billings for FY 2014-15 (March through June 2015) are estimated to be \$87 million. The state would forego fire prevention fee revenues and in place impose the proposed insurance surcharge. Assessment and collection of the proposed insurance surcharge is outside the BOE's purview.